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CURRENT TOPICS

Vehicle Testing

VEHICLE testing under official auspices is at last going to begin. The Motor Vehicles (Tests) Regulations, 1960 (S.I. 1960 No. 1083), prescribe 12th September next as the commencing date for the voluntary testing of vehicles. Owners may arrange for the brakes, lights and steering of their vehicles to be tested by one or more of the authorised examiners. Garages will act as testing stations and those appointed from the 12,000 which have applied for appointment as such will be identifiable by the display of an approved square-shaped sign of three interlinked white triangles on a blue background. Testing is not being made compulsory immediately so that owners may have the opportunity to obtain test certificates. In due course, however, it will be unlawful for vehicles first registered more than ten years earlier to be on the road without a valid certificate. Later the production of such a certificate will be required by authorities issuing vehicle excise licences. Test certificates will be valid for one year. The vehicle owner will have to pay the examiner 10s. 6d. for a motor bicycle and 15s. for any other motor vehicle where a certificate is issued and in each case 1s. less where it is refused. If a vehicle fails the test the examiner will give a brief indication of the reasons. An owner will be able to appeal against the refusal to grant a certificate through the traffic area office of the Ministry of Transport within fourteen days of the test. The vehicle will then be examined by a Ministry inspector at the testing station where the original test was carried out at a fee of 17s. 6d. for a motor bicycle and 25s. for any other vehicle, and this fee will be refunded wholly or in part if good grounds for the appeal are shown. Reduced fees will be charged for the retesting of vehicles. The administrative problems in working the vehicle testing scheme will be immense. There are now some 2m. vehicles more than ten years old on the road and as soon as this backlog is cleared another ¾m. vehicles will have become liable to compulsory testing. It seems quite likely that provision will have to be made for accepting appointment cards for tests as equivalent to test certificates for such purposes as obtaining vehicle excise licences.

Articled Clerks and National Insurance

WE have already devoted an article (at p. 475) to the case of *Benjamin and Another* v. *Minister of Pensions and National Insurance*, which we report this week at p. 624. To fall within the definition of "employed persons" given by s. 1 (2) (*a*) of the National Insurance Act, 1946, a person must be "gainfully occupied in employment in Great Britain, being employment under a contract of service."

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This case concerned a solicitor's articled clerk whose articles of clerkship made no provision for payment to be made to him. In January, 1956, however, the solicitor told the clerk that he was pleased with him and would give him £100 in 1956 to spend on holidays and not to use on his general living expenses. The clerk duly received that sum in four equal instalments. Mr. JUSTICE SALMON found that the £100 was intended to be in payment for the clerk's services and was not given as a personal present. Accordingly, he upheld the Minister's decision that the clerk was an employed person for purposes of national insurance. It followed that national insurance contributions had to be paid in respect of the clerk's employment. Although this is the first national insurance case concerned with the correct classification of an articled clerk to reach the High Court, it is not the first such published decision of the Minister. In decision No. M.29, an accountant's articled clerk was serving under articles in which also there was no provision for remuneration to be paid to him. He received no wages, but payments were made to him in respect of the cost of his meals and travelling expenses for each day on which he attended at the accountant's office; the Minister held that he was an employed person within the meaning of the Act as he was employed in a gainful occupation by reason of the payments made in respect of subsistence. In decision No. M.53, a clerk articled to a partner in a firm of auctioneers and estate agents was serving under articles which did provide in express terms for wages to be paid to him. The three parties to the deed did not in fact intend that the clerk should be paid wages, but that a premium should be repaid to his father by instalments. The premium was being repaid to the father on a scale which corresponded broadly to the scale of wages expressed in the deed and no wages had been paid to the clerk. It was held that this clerk also was an employed person for purposes of national insurance because he was employed under a contract of service and, since he had a right to sue for wages, he was gainfully occupied in the employment. These decisions will be of interest to principals with articled clerks not on the firm's payroll. If, as was suggested at this year's annual meeting of The Law Society, it becomes the normal practice to pay articled clerks, then for solicitors the cases summarised will belong to the large category labelled of academic interest only.

A Libellous Description ?

IN *Sim* v. *Stretch* [1936] 2 All E.R. 1237, LORD ATKIN suggested that the test to be applied in deciding whether words are capable of a defamatory meaning is: "Would the words tend to lower the plaintiff in the estimation of right-thinking members of society generally?" In view of this, is a statement that a person is a Communist capable of a defamatory meaning? It would seem that it is. In *Burns* v. *Associated Newspapers, Ltd.* (1925), 42 T.L.R. 37, a daily newspaper inferred that six Labour candidates at a borough council election were Communists. ASTBURY, J., thought that "Communists were such persons that to describe a man as a Communist was probably libellous," but the real point in issue was whether the statement was a false statement as to personal character within s. 1 (1) of the Municipal Elections (Corrupt and Illegal Practices) Act, 1911. Again, in *Braddock* v. *Bevins* [1948] 1 K.B. 580, it appears to have been assumed that the appellation "Communist" may bear a defamatory meaning and the courts of the United States (see, e.g., *Remington* v. *Bentley* (1949), 88 F. Supp. 166) have recorded similar decisions, although in some cases they have come to the opposite conclusion. The point arose in *Mansur* v. *Cassel and Company, Ltd.* (1960), *The Times*, 15th July, and *Mansur* v. *Routledge & Kegan Paul, Ltd.* (1960), *The Times*, 20th July, and in both cases the plaintiff, a practising Roman Catholic, alleged that some words in a book published by the defendants had been widely understood to mean that he was a Communist. The plaintiff brought actions for libel to vindicate his good name, but the actions were settled on the terms that the defendants should make a public retraction and apology, indemnify the plaintiff in respect of his costs and insert a suitable errata slip in all unsold copies of the book.

A Double-barrelled Offence

CRIMINAL courts are often confronted with cases concerning the use of firearms, but the Lambeth magistrates were recently required to deal with a prosecution arising out of the sale of a double-barrelled 12-bore hammer gun contrary to the requirements of s. 108 of the Gun Barrel Proof Act, 1868. That section provides that a small arm shall not be sold or exchanged unless and until the barrel or every barrel thereof has been duly proved at the proof house of the Gunmakers Company or the guardians of the Birmingham proof house, or some other public proof house established by law, and duly marked as proved. It seems that the gun in question had not been duly proved and marked, and as every person selling any small arm the barrel or barrels whereof are not duly proved and marked as proved is for every such barrel liable to a fine not exceeding £20 (s. 122 (3) of the 1868 Act), the magistrates were able to impose a fine of £40. The Gun Barrel Proof Act, 1868, is a local Act and nothing in the Firearms Act, 1937, applies to the Gunmakers Company or the guardians of the Birmingham proof house so as to interfere in any way with the operations of those two companies in proving firearms, or to any person carrying firearms to or from any such proof house when being taken to such proof house for the purposes of proof or being removed therefrom after proof (s. 33 (4) of the 1937 Act).

Keeping the Score

THE Census Regulations, 1960 (S.I. 1960 No. 1175), with their bulky folding charts and forms waiting invitingly to be pulled out, have something of the air of a guide to Paris, but the homelier matters with which they deal are not without their own interest. They provide for the appointment of officers and for the detailed arrangements necessary for the conduct of a census under the Census Act, 1920, and in particular for the census directed to be taken by the Census Order, 1960, which is to take place on 24th April, 1961. The regulations make specific arrangements for taking certain additional details on a sample basis from approximately one-tenth of the population, thus relieving nine persons in every ten, the regulations say kindly, from giving these extra particulars. Everybody gets into some kind of statistics nowadays, so presumably nobody will feel injured at being excluded from these particular figures. People who in any case resent being reduced to the level of a mere statistic must remember that this is the only sort of unfading memorability that most of us are ever likely to achieve, and that there are worse statistics than the population figures in which to find one's permanent niche.

THE EFFECT OF BUILDING ALTERATIONS ON RATEABLE OCCUPATION

THE pattern of development in ordinary retail trading has undergone considerable change in the post-war period. This is very apparent on the face of our cities, where old established family firms have sold out commanding sites on busy thoroughfares to the rapidly expanding multiple stores, and have retired to the more leisured pace and space of quieter streets. Everywhere shops and offices are being pulled down to make way for bigger and newer establishments. Very commonly, the premises which are purchased for the new owner cannot be used for the purposes of the new business until substantial alterations are carried out. When these alterations take some time, the question of liability for rates may be raised. When the sole object of the alterations is to make the premises fit for the only use which is contemplated, does this constitute " occupation " for rating purposes ?

There is ample authority on what constitutes rateable occupation, but it is not always consistent and, with one possible exception, there was no authoritative ruling on the matter until the recent decision in the House of Lords in *Arbuckle Smith & Co., Ltd.* v. *Greenock Corporation* [1960] 2 W.L.R. 435 ; p. 207, *ante*.

This case was a Scottish appeal and there are differences in the rating systems of England and Scotland, which lead to divergences in some respects. However, both the Scottish Lord Ordinary, and the judges of the Second Division of the Court of Session, against whose decision the appeal was taken to the House of Lords, treated the law in both countries as being the same on the point, as did the Scottish Lords of Appeal, Lord Keith and Lord Reid, and Lord Radcliffe said :—

> " Having regard to the general link between the conceptions of rateability ruling in the two countries, which was confirmed by the successive decisions of this House in *Jones* v. *Mersey Docks and Harbour Board* (1865), 11 H.L.Cas. 443, and *Clyde Navigation Trustees* v. *Adamson* (1865), 4 Macq. 931, I should have been disposed in any event to consider the case on the same basis."

It is clear then that the recent decision, involving as it did the re-statement of an important question of principle, is to have force and application in English rating law also.

Facts of the recent decision

Arbuckle Smith & Co., Ltd., purchased warehouse premises in Greenock in March, 1957, with a view to using them as a bonded warehouse for spirits. The company could not use the premises for this purpose until provisional approval was given by H.M. Customs and Excise, and this approval was held up until certain standard security precautions, such as boarding up and barring doors and windows, had been taken. The required alterations were begun in March, 1958, and completed in June, 1958, when approval was granted by H.M. Customs and the premises were thereafter used as a bonded store. The local assessor assessed the company for rates on the premises for the period Whitsunday, 1957, to Whitsunday, 1958, during which time the company had never used the premises as a bonded store or for any purpose of their business as warehousemen.

The relevant Scottish statutory provisions may be briefly stated ; under the Local Government (Scotland) Act, 1947, and the Valuation and Rating (Scotland) Act, 1956, every notice levied by a rating authority is payable by occupiers only, " occupiers " being defined by s. 379 of the 1947 Act as meaning " the tenant or sub-tenant or any person in the actual occupation of land." Section 243 (1) of the same Act provides that " any rate levied by the rating authority shall not be payable in respect of lands or heritages if the lands and heritages are unlet, unoccupied and unfurnished throughout the whole of the year from Whitsunday to Whitsunday corresponding to or as nearly as may be to the period for which the rate is levied."

In an action for payment of the rates by Greenock Corporation against the company, the defenders pleaded s. 243 and denied liability to pay on the ground that the premises were " unoccupied " in the sense used in the context of rating, the corporation having conceded that the premises were unlet and unfurnished. The judge of first instance was Lord Guest, a leading authority on valuation law in Scotland and author of the textbook Guest on Valuation. After hearing legal debate, Lord Guest granted decree for payment, holding that, although neither a mere intention to occupy premises nor the overt act of commencing alterations could amount to rateable occupation, the two elements combined to make a beneficial use of the premises, and there was therefore rateable occupation.

English decisions cited

Lord Guest said that there was nothing in the English authorities which compelled him to hold that in the circumstances there was no rateable occupation ; among the cases he referred to were *R.* v. *Melladew* [1907] 1 K.B. 192, in which a warehouse was closed down and the water supply cut off, but the warehouseman was ready to receive applications for the hire of the storage room, and it was held that, as there was no cessation of occupation, rates were due ; *London County Council* v. *Hackney Corporation* [1928] 2 K.B. 588, which concerned a school left empty with only a caretaker in possession, where it was held that there was no beneficial occupation, and therefore no liability for rates ; *Associated Cinema Properties, Ltd.* v. *Hampstead Borough Council* [1944] K.B. 412, one of the " stand-by " cases where accommodation was taken and kept to be used as a stand-by in the event of other premises being destroyed by bombing, and where it was held that a mere intention to occupy premises on the happening of a future uncertain event could not, without more, be evidence of occupation ; and *Hackney Borough Council* v. *Metropolitan Asylums Board* (1924), 40 T.L.R. 645, discussed below.

View of the Scottish court

Lord Guest's decision was upheld when it was taken to appeal to the Second Division, but subsequently the House of Lords reversed that decision. Lord Patrick, who gave the leading judgment in the Division (reported [1960] S.L.T. 49), began by saying that " actual occupation of land " meant *de facto* occupation, and Viscount Kilmuir at the latter stage agreed that an owner of land must have made some actual use of the premises before he could be called upon to pay rates. Lord Patrick said that he took it to be authoritatively established that in the law of Scotland rateable occupation must be beneficial, by which is meant that the occupation is of value.

It was in the application of the requirement that occupation must be of value to the particular facts of the case that the judges of the Court of Session and of the House of Lords parted company. The Scottish judges were obviously much impressed by the advantages which the company would derive from altering their premises, as tending to show an "occupation of value." Lord Patrick considered several tests; judged by the test whether a hypothetical tenant would offer a valuable consideration for the occupation in question, it was clear that the company would have done so; again, during their period of occupation, the property steadily became by reason of the alterations more suitable for the purposes for which it was required by the company, and therefore more valuable to them; thirdly, on the supposition that if the actual occupation had been thrown open to competitive bidding in the open market, it would have been to the advantage of the company to make a bid. The result of all these tests, in Lord Patrick's view, pointed to the conclusion that the company's occupation had been of value.

Alterations to "advantage" of owners

This approach was, however, not accepted by Viscount Kilmuir, who thought that it did not follow that, because it was an advantage to the company to alter their premises, therefore they were making beneficial use of them. In his judgment in the House of Lords, his lordship said:—

> "It is an undoubted advantage to the owner of an empty house to put on some slates and keep it weathertight, but the fact that he does so could not create rateable occupation where none existed. I cannot myself accept the view that when a person is repairing or altering something designed for a particular purpose, he is by that action making use of it."

Much the same view was taken by Lord Reid, who saw a clear distinction between maintaining, repairing or improving the fabric of premises and enjoying the accommodation which it provided; similarly, Lord Radcliffe, who said that it was not a correct or conclusive test to inquire whether the work done was to the advantage of the owner, for indeed, except in exceptional circumstances, it would be assumed to be so. In the same way, maintenance work prevented a loss in value, but did not suffice to show occupation "of value."

Previous decisions doubted

The English authority frequently quoted as being most nearly in point turned on this question of whether individual acts of maintenance and improvement could constitute occupation. The case is *Hackney Borough Council* v. *Metropolitan Asylums Board*, *supra*, in which Lord Hewart, C.J., indicated that the carrying out of alterations without more might not amount to rateable occupation. In that case the board purchased premises which, after a short period of use, were altered to become more suitable for use as a fever hospital. The court held that there was "an accumulation of factors," such as the employment of a gardener and the fact that the board employed direct labour and took in stocks of coal to fire and test the boilers, which were sufficient to turn the occupation into rateable occupation.

This decision was severely criticised in the House of Lords recently, and Lord Reid "doubted" the suggested ratio of the case that, although individual acts of maintenance and improvement did not constitute rateable occupation, an accumulation of such acts might do so. Neither Lord Kilmuir nor Lord Radcliffe could see the relevance of the comparatively trivial factors mentioned, and the latter said that it was impossible to refer to the case as an authority on any matter of principle, owing to the "extreme ambiguity" of the judgment. To say the least, then, the authority of the case must fall under question.

Another reported case quoted in all the judgments was the Scottish case of *Commercial Bank of Scotland* v. *Glasgow Corporation* [1925] S.L.T. (Sh. Ct.) 142. The case, being merely a decision of the Sheriff Court, was not binding on any of the courts which heard the *Arbuckle Smith* case, but was frequently cited because of the remarkable similarity of the facts of the two cases. In the *Commercial Bank* case, the bank purchased certain properties and made structural alterations, during which time no business could be carried on in the premises. The sheriff applied the case of *Hackney* and held that the bank had been rightly assessed as an occupier and was liable to pay the rates. The *Commercial Bank* case was specifically overruled by the House of Lords in the *Arbuckle Smith* case.

Principle laid down

The principle of rating law laid down in *Arbuckle Smith & Co., Ltd.*, may perhaps be summarised from Lord Kilmuir's judgment, at p. 438, as follows: alterations carried on in premises, the sole object of which is to make the premises fit for the only use which is contemplated, do not amount to the kind of actual user which is essential to rateable occupation, and where the premises are not being applied to the purpose for which they existed but are in an antecedent stage, there is no occupation attracting liability for rates.

This is a decision which, unlike some of the cases decided in the House of Lords, clarifies a principle which is likely to be of importance in many instances. The problem of whether there is rateable occupation during alterations to a building is one which must often come up in practice, but the recent decision has cleared the law from uncertainty and ambiguity.

N. G.

Honours and Appointments

Mr. NORMAN SYDNEY FISHER, solicitor, has been appointed Town Clerk of Derby in succession to the late Mr. G. H. Emlyn Jones. Mr. Fisher was admitted in 1948 and has been deputy town clerk of Derby since 1954.

Mr. RUSSELL JESSOP, solicitor, of Gloucester, has been appointed Coroner for the Forest of Dean area with effect from 1st August.

Mr. ARTHUR MICHAEL LEE, D.S.C., has been appointed Recorder of the Borough of Penzance.

Mr. HUGH EAMES PARK, Q.C., has been appointed deputy chairman of the Court of Quarter Sessions for the County of Devon.

Personal Notes

Mr. VICTOR BLANCHARD, LL.M., solicitor, retired from the office of Town Clerk of Portsmouth on 30th July after thirty-three years' service with the corporation. To perpetuate the name of Mr. Blanchard, who was admitted in 1922, the Portsmouth branch of the National and Local Government Officers Association have awarded an annual scholarship, named the Blanchard Scholarship, to the Southern Provincial School at Jesus College, Oxford.

Mr. PETER WILLIAM LEAMAN, solicitor, of Chester, was married to Miss Elizabeth Platt of Tarporley, Cheshire, at St. Helen's Church, Tarporley, on 15th July.

Family Law

TWO UNUSUAL CRUELTY CASES

THERE have been two recent divorce cases which, while of interest for the law involved, are made memorable by the exotic nature of the cruelty alleged. It is always difficult to decide whether any particular unusual activity on the part of a spouse amounts to legal cruelty and these cases give some idea of the limits of this matrimonial offence. It will be noted that there is nothing devious about the reasoning behind the judgments: in each case the Court of Appeal made its decision by the application of basic principles, such as the necessity to show an intention to injure and the meaning of condonation. In neither case was the outcome satisfactory for the petitioner, since neither of these unhappy people was set free from a marriage made intolerable by the curious conduct of an equally unfortunate spouse. It is perhaps less surprising that the petitions failed than that they were ever brought before the Court of Appeal.

Transvestism not cruelty

Transvestism, or the practice of dressing in the clothes usually worn by the opposite sex, is common enough in its minor manifestations, especially among women, and much of this mild sex-reversal is innocent enough. Even in its more serious forms it is by no means uncommon, and many male adolescents pass through a stage when they derive sexual excitement from dressing in female clothes. However, this aberration never appears to have been put forward as matrimonial cruelty until some two years ago when Collingwood, J., in *Williams* v. *Williams* (1958), *The Times*, 15th March, granted a decree on the ground of cruelty which consisted solely of the husband's dressing up as a woman. Very recently the courts have had to deal with a similar case which went the other way, but the distinction between the two cases is an excellent demonstration of one of the most important principles of the law relating to cruelty.

In *Bohnel* v. *Bohnel* [1960] 1 W.L.R. 590; p. 448, *ante*, the wife petitioner claimed that her husband had treated her with cruelty "in that [he had] constantly desired and shown his desire to behave like a woman." More particularly she complained that she found him dressed in women's clothes on one occasion, that he possessed "unguents and powder more usually possessed by women than men," that he was repelled by sexual intercourse and that he failed to undergo treatment recommended by a psychiatrist. Her original discovery in 1955 that he was hiding women's clothes about the house caused her to have a nervous breakdown. There was clear evidence that the husband, so far from flaunting his perversion, went to great pains to hide it from his wife: when he was first discovered he wept and asked for her help, and the only occasion on which the wife saw him dressed in women's clothing was in 1958 when she returned home unexpectedly. Apart from the distress caused by the knowledge of her husband's desires, the wife could not be said to have suffered any particular matrimonial trauma and the main trouble between the parties seems to have been the husband's frigidity. Indeed, the Commissioner clearly suspected that the wife's distress was largely caused by her husband's lack of desire for her.

Medical evidence was given that the wife's mental breakdown on first discovering her husband's proclivities had been due to that discovery and furthermore that recurrences of her breakdown might be expected in similar circumstances. But there had been no such recurrence and she had not required any further treatment. There was further evidence that the treatment recommended for the husband, while likely to reduce his desire for dressing-up, could not have been expected to have had any effect on his feelings for the opposite sex; if anything, these also would have been reduced.

The subjective test

The wife's petition was dismissed, the Commissioner taking the view that the decisive feature of the case was the secretive nature of the husband's behaviour. He relied on this to distinguish the case from *Williams* v. *Willams*, *supra*, where the husband had consistently paraded his unnatural tendencies, knowing quite well that he was causing distress to his wife. The Commissioner found that the wife in *Bohnel's* case fell short of proving that her husband had deliberately intended to hurt or cause injury to her, and on that ground he dismissed the petition. On appeal, this question of intention was considered very thoroughly: all the judges regarded the case as a borderline one, which lay to be determined by the test of foreseeability imposed by Lord Tucker in *Jamieson* v. *Jamieson* [1952] A.C. 525:—

> "Every such act must be judged in relation to its attendant circumstances, and the physical or mental condition or susceptibilities of the innocent spouse, the intention of the offending spouse and the offender's knowledge of the actual or probable effect of his conduct on the other's health . . . are all matters which may be decisive in determining on which side of the line a particular act or course of conduct lies."

In other words, to decide these difficult cases a double subjective test must be applied: what did this particular husband intend to do to this particular wife? In *Bohnel* the Court of Appeal had no difficulty in deciding that the husband could not reasonably have expected any injury to result to his wife from the manner in which he gave way to his aberration.

The importunate wife

It is not uncommon to find in a wife's petition complaints of the husband's violence in pursuit of sexual satisfaction, but it must be rare to find the boot on the other foot. In *Willan* v. *Willan* [1960] 1 W.L.R. 624; p. 507, *ante*, a husband's main complaint was that his wife forced him to comply with her sexual demands by pulling his hair, holding him by the ears and rocking his head, kicking him and generally pestering him far into the night, so that he was forced to give in eventually if he were to have any sleep at all. On the night before the husband left the matrimonial home this dreary routine was followed, ending, as it usually did end, with the exhausted husband having intercourse with his wife.

Mr. Commissioner Gallop found the cruelty proved but dismissed the petition because the cruelty had been condoned by the final act of intercourse. On the point of condonation the husband appealed. It was argued on his behalf, firstly, that the act of intercourse was part of an act of cruelty, and therefore could not be condonation, but the Court of Appeal pointed out that this was tantamount to saying that the wife's submission to, or co-operation in, the sexual act amounted to cruelty, which was patently absurd. Secondly,

it was said that the act was induced by duress on the part of the wife and therefore was not condonation, but this was disposed of by the rule (almost absolute) that intercourse by a husband who has full knowledge of his wife's matrimonial offences is conclusive of condonation: the only exception to this is where the act is induced by fraud on the part of the wife. No such rule operates against a wife, of course; she may, and often does, successfully argue that she agreed to intercourse for all sorts of reasons—fear, desire for a quiet life, anxiety not to wake the children—and therefore did not condone the previous matrimonial offences. This is not because the law assumes a man to have greater control than a woman over happenings in the marriage bed, but because a woman risks pregnancy by every act of intercourse and a man cannot therefore be allowed to prejudice her in this way without wiping out his previous cause for complaint against her. To allow a husband to approbate and reprobate a marriage in such a way is regarded as repugnant to decency.

"Through whatever blandishment or irritation"

Presumably hypnotism of the husband in such circumstances would negative condonation, but the use of tranquillising drugs by the husband which made him more ready to have intercourse did not prevent the act from being condonation—see *Benton* v. *Benton* [1958] P. 12—although if the husband had been induced by fraud to take the drugs the situation would be different. In this case the Court of Appeal held that if a man submit to intercourse, "through whatever blandishment or irritation on the part of his wife" (in the words of the learned Commissioner), it must be held to be a voluntary act and therefore to effect condonation. After all, he could have run away.

MARGARET PUXON.

REGISTRATION UNDER THE MAINTENANCE ORDERS ACT, 1958

AN important distinction was drawn in *Miller* v. *Miller* (1960), *The Times*, 31st May, between the position of magistrates acting under jurisdiction conferred upon them by the Maintenance Orders Act, 1958, and that exercisable by magistrates under s. 7 of the Summary Jurisdiction (Married Women) Act, 1895, as amended. Under the Maintenance Orders Act, 1958, certain maintenance orders made by the High Court or county court could be registered in the magistrates court and vice versa, and in these cases magistrates had power to vary the orders registered with them, provided that they could not increase the rate over £5 a week although a higher rate could be reduced below £5. The sole right was to vary the order and not as in the 1895 Act and by the High Court under s. 4 of the Matrimonial Causes (Property and Maintenance) Act, 1958, to discharge the order or vary its terms. Section 4 of the 1958 Act in addition provides that the High Court can suspend any provision of the order temporarily and revive the operation of any provision so suspended. Although the court of registration can only vary the order, it is interesting to note that under s. 5 (2) of the Maintenance Orders Act, 1958, the original court can still either vary or discharge an order registered in the magistrates' court.

As the magistrates exercised the powers of the High Court they had to follow the principles established in the High Court which laid considerable emphasis on the financial position of the parties. For instance, remarriage in itself in the absence of a *dum sola et casta* clause was not a ground for reduction of maintenance allowance from a former husband although it might well be reduced having regard to the fact that a second husband was a pecuniary asset to her. In *Miller* v. *Miller* an order of the High Court for maintenance for Mrs. Miller at the rate of £400 per annum less tax and £104 per annum less tax for her three children was registered in Collompton magistrates' court. On the ground that a charge of adultery had been proved against Mrs. Miller, the Collompton magistrates reduced the order to £26 per annum less tax on application by the husband in respect of Mrs. Miller's own maintenance, but on appeal the High Court altered the rate to £200 per annum, half the original rate. They considered that as the husband by his cruelty had contributed to the breakdown of the marriage the financial position of Mrs. Miller should be taken into account. She had less financial security from the man with whom she was living than she would have had if she had remarried and the court was not a court of morals. The magistrates were wrong in taking into account the fact that it would be morally indefensible for Mr. Miller to maintain his ex-wife for the benefit of another man with whom she appeared to be living openly.

There was considerable advantage in obtaining registration in the magistrates' court. A woman who obtains a magistrates' court order has maintenance collected by a collecting officer, which is very satisfactory compared with administration in the High Court, where enforcement is sometimes difficult and is often achieved by transferring proceedings to the appropriate county court.

R. P. C.

CRIMINAL STATISTICS, 1959

The Criminal Statistics for England and Wales for 1959, published last week (Cmnd. 1100, H.M.S.O., 8s.), show that, although the upward trend in the total number of indictable offences known to the police continued throughout 1959, the rise was not as steep as in 1958. In the latter year, the increase over the previous year was 14·8 per cent., but in 1959 the increase over 1958 was 7·8 per cent. The proportionate increases were greatest in the groups of offences classified as frauds and false pretences and violence against the person. The number of breaking and entering offences, which rose rapidly in the years 1956, 1957 and 1958, increased by only 4 per cent. in 1959. Judging by the statistics of convictions, the increase in crime among juveniles and young men and women was much less than in the previous year.

LAW SOCIETY'S INTERMEDIATE EXAMINATION

In The Law Society's Intermediate Examination (Law Portion) held in June, 136 of the 243 candidates passed, the following candidates being placed in the First Class: Mr. David Ashmore Beety and Mrs. Marjorie Vernon Griffin.

MATRIMONIAL CAUSES AT TUNBRIDGE WELLS

The Matrimonial Causes (District Registries) (No. 2) Order, 1960 (S.I. 1960 No. 1213), provides that on and after 1st September, 1960, any matrimonial cause or matter may, subject to the provisions of the Matrimonial Causes Rules, 1957, be commenced and prosecuted in the District Registry of the High Court at Tunbridge Wells in addition to the District Registries set out in App. I to those rules.

"The Solicitors' Journal"
Friday, August 5, 1960

Landlord and Tenant Notebook

WATER RATES AS OUTGOINGS

It can be said that there were three points at issue in *King* v. *Cave-Browne-Cave* [1960] 3 W.L.R. 204; p. 567, *ante*. The defendant held a lease of four offices on the second floor of a London building. He had covenanted with the plaintiff, his landlord, "to pay all existing and future rates taxes assessments and outgoings whether parliamentary, local or otherwise now or hereafter imposed upon the demised premises except only such as the owner is by law bound to pay notwithstanding any contract to the contrary." The parcels concluded with "hereinafter called the demised premises, together with the use in common with other tenants of the third floor of the said building of the lavatories and conveniences on the third floor." The Metropolitan Water Board having demanded, of the plaintiff, a water rate "on the undermentioned premises . . . the second-floor front offices and two rear offices" and the "third-floor offices," based on the annual value of each, the plaintiff applied to the defendant for the amount demanded in respect of the second-floor offices. Payment was refused and the action was for the amount in question.

The issues were: was the water rate an outgoing, etc.; if so, was it imposed; and if so, was it imposed upon the demised premises?

Object

Tenants' covenants to pay outgoings have been subjected to much judicial interpretation. The object of such a covenant has been proclaimed to be that the owner or landlord shall get or receive his rent clear of all deductions: *Smith* v. *Robinson* [1893] 2 Q.B. 53; *George* v. *Coates* (1903), 88 L.T. 48 (C.A.); but the ingenuity displayed by authorities in inventing new taxes and new names, plus the application of the "what may reasonably be supposed to have been in the contemplation of the parties" rule, led to a vast amount of litigation—and to elaboration of precedents. (It also led to Parliament seeking to protect tenants called upon to pay "non-recurrent" outgoings or impositions (e.g., the £118 drainage reconstruction expenses collected from a tenant, holding for three years at £54 a year, in *Re Warriner; Brayshaw* v. *Ninnis* [1903] 2 Ch. 367).)

While the object of a landlord's covenant is to make the rent "inclusive" (*Bourn & Tant* v. *Salmon & Gluckstein, Ltd.* [1907] 1 Ch. 616 (C.A.)), the decision in *King* v. *Cave-Browne-Cave* should be considered in the light of the above.

A water rate

It was not, apparently, argued that the water rate was an "outgoing," the plaintiff being content to rely on authorities showing that it was a "rate": curiously enough, the covenantors concerned in these cases were landlords. There was *Direct Spanish Telegraph Co., Ltd.* v. *Shepherd* (1884), 13 Q.B.D. 202, decided partly by reference to the interpretation clause of the Waterworks Clauses Act, 1847, making "water-rate" include any rent, reward, or payment made to the undertakers for the supply of water—and also providing that the rate should be payable according to the annual value of the tenement supplied. There was, again, *Bourn & Tant* v. *Salmon & Gluckstein, Ltd., supra*, in which an underlease of a shop and basement contained a lessor's covenant "to procure to be paid all rates and taxes payable in respect of the said demised premises." The court was largely influenced by the consideration that water was a necessity and not obtainable otherwise than from the water board, and by the further consideration that the covenant meant that the lessees were to pay an inclusive rent.

Perhaps when the time comes to try to find something nice to say about the draftsmen of the Rent Acts it will be recalled that they did anticipate argument by the provision "the expression 'rates' includes water rents and charges," first used in the Increase of Rent, etc. (War Restrictions) Act, 1915, s. 1 (1) (iv).

Imposed

In *Badcock* v. *Hunt* (1888), 22 Q.B.D. 145, the plaintiff landlords had covenanted to pay, discharge, etc., all rates, taxes and impositions whatsoever, whether parliamentary, parochial, or imposed by the City of London, now or hereafter assessed on the premises (a warehouse). It was held that, whether the interpretation of "rates" in *Direct Spanish Telegraph Co., Ltd.* v. *Shepherd* was correct or not (it was approved in *Bourn & Tant* v. *Salmon & Gluckstein, Ltd.*) a rate was not "imposed" when the person paying it incurred liability voluntarily; Lopes, L.J., resorted to a *reductio ad absurdum* by instancing the price of wine or beer supplied to the occupier. To the same effect was *Re Floyd; Floyd* v. *J. Lyons & Co.* [1897] 1 Ch. 633, deciding that a landlord's covenant to pay water rate assessed upon the premises or on the lessor or lessee did not extend to water supplied to the tenants for trade purposes.

These decisions are, it might be considered, difficult to reconcile with *Bourn & Tant* v. *Salmon & Gluckstein, Ltd.*, which McNair, J., held applicable to the case before him. If the learned judge appears to have treated the two points I have discussed as one, support can be found for his view in the possible difference between the object of a landlord's covenant and that of a tenant's covenant and in what might be considered the broad view that the words "rates imposed upon the demised premises" would be understood to cover the charge "by any person taking office premises in London. Such a person, whether paying an inclusive or exclusive rent, would naturally be interested in both general rates and the water rates."

The demised premises

The covenant before the court did not contain all the modern improvements. It specified several varieties of outgoings and various possible sources of imposition, and it did not overlook the fact that there might be new inventions during the term. It limited itself, however, to such as were imposed upon the demised premises: the best precedents continue with "or the owner or occupier in respect thereof." The water rate was one imposed on the owner or occupier (Water Act, 1945). McNair, J., held, however, that the expression used clearly in effect meant "in respect of the premises." Support for this view could, I submit, be found in *Foulger* v. *Arding* [1902] 1 K.B. 700 (C.A.).

What one would like to have heard more about is the question whether this charge was one made in respect of the *demised* premises. The only case referred to in which a tenant had a right to use a lavatory in another part of the building was *Drieselmann* v. *Winstanley* (1909), 53 Sol. J. 631, and as it was the landlord who was the covenantor and who was held liable for water rates for domestic supply, it hardly

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seems in point. It may be that the defendant in *King* v. *Cave-Browne-Cave* can be said to have " contemplated " paying the water-rate ; but when one finds that his lease gave him offices which it described as " the demised premises," then adding the right to use the facilities on another floor, it would seem that a strong case could be made for resisting the demand in so far, at all events, as it was based on the annual value of the upper floor. True, there is no doubt, as Lord Goddard, C.J., said in *Gardiner* v. *Sevenoaks Rural District Council* [1950] 2 All E.R. 84, that from time to time the word " premises " has been given different meanings, either extended or more restricted ; but the lease in *King* v. *Cave-Browne-Cave* expressly distinguished between the demised premises and the rights *in alieno solo*.

R. B.

WHO'D BE A CLIENT ?

HOWEVER hard I try, they always seem to think I'm on their side.

" We know you can use your influence," Mr. Tibbs says to me pathetically, " and oh dear, we *do* want this draft before the board meeting to-morrow."

" I have no influence," I reply. (These few words are important, because they are basically the only true ones ever spoken by me.) " As a matter of fact," I continue thoughtfully, " Mr. Bluff dictated a draft the day before yesterday."

" How extraordinary that we haven't received it," quavers Mr. Tibbs. " Perhaps it's got lost in our office."

He sounds so anxious and unhappy that in spite of myself I hasten to reassure him.

" Oh no," I explain, " it's here all right. It's just that I haven't typed it yet."

This takes a few minutes to sink in.

" Do you think," Mr. Tibbs says eventually, " that you will find time to type it to-day ? "

He is not being sarcastic ; he is just a genuine, uncomplicated man—a client, in fact, and not a lawyer.

" It all depends," I reply, " on the telephone. It does seem to take up so much time."

The conversation ends in the friendliest possible manner. At Mr. Tibbs' request I deliver the draft to his office on my way home from work at about half-past eight. This is very inconvenient for his office, but it makes him feel cared for.

Next morning Tibbs is on the telephone again. He is quite happy about his board meeting, but now he has a conveyancing problem. It is all my fault, of course, for having cared for him yesterday ; he feels now that he has at least one friend.

" This is nothing to do with Mr. Bluff," I say, as soon as I can get a word in edgeways. " You should speak to one of our conveyancing partners—Mr. Chuff would be the man."

" But I don't know Mr. Chuff," Tibbs protests.

" Then it's time you did," I say very firmly. I transfer him relentlessly back to the switchboard, who in turn transfer him to Chuff, who is out, Chuff's assistant, who is on holiday, Chuff's articled clerk, who has not yet reappeared after a party last night, and two or three secretaries, who furnish him with the above information suitably modified. He is then transferred back to me in a state bordering on hysteria.

As soon as I have a free moment I type out Mr. Tibbs' message. Even in its most condensed form it runs into two sizeable paragraphs ; at the bottom I put, " Please telephone Tibbs " (which is, after all, the operative clause) and march over to deliver it personally to its target.

No partner of Twiddle & Co.—even a conveyancing partner—is ever, ever asleep. Mr. Chuff, however, is deep in thought when I intrude rather boisterously into his office. He opens one eye and takes in at a glance the note, the new client, the work to be done. He searches in his wallet for a small ticket, which he pins on to the note and hands it back to me. The ticket depicts a midnight owl of peculiarly ferocious aspect, and underneath is written, " Please do not disturb."

I am so delighted with the owl that I forget all about Tibbs. I stroll back to my room and stop on the way to have a word with the receptionist, who is a friend of mine. Unwise. She has with her Mr. John D. Doppelberger of Philadelphia, who wants to shake hands with one of our partners. He has an introduction to Mr. Wuff, who is engaged, and Mr. Wuff's secretary has basely suggested Mr. Bluff's name. (The receptionist does not use the word " basely " ; she is a sweet girl who is kind to stray clients.) I undertake to look for Mr. Bluff and, after a fifteen minutes' search, I run him to earth in the basement. He has that happy, carefree expression which he always wears when he thinks I don't know where he is. Very soon his habitual look of despair returns, and he is closeted with Mr. John P. Doppelberger, about whom he knows absolutely nothing except that he comes from Philadelphia and ought to be seeing Mr. Wuff.

Mr. John P. Doppelberger's handshake has already prolonged itself for over an hour when Mr. Bluff rings for me and says, " Find out if Mr. Wuff is free to-morrow."

Mr. Wuff is a splendid lawyer with a very deep voice and a very strong face. When I ask him if he is free to-morrow he immediately starts talking French, which is unfair because it makes me laugh and I lose my grip on the situation. Which is what he intended. I am forced to explain by saying, " This is a shot which your secretary fired at us and now we're firing it back." He looks enquiringly at his secretary who, realising the game is up, admits full liability for Mr. John P. Doppelberger.

" I'd better walk in on him now," growls Mr. Wuff. He dons his coat and bowler hat, arms himself with an umbrella and a brief-case, and rushes in to Mr. Bluff and Mr. John P. Doppelberger for a flying visit. His travelling clothes prevent him from being caught for a conference on the spot, but not from being charged with the bulk of Mr. John P. Doppelberger's work in the immediate future. This much I gather afterwards from the way in which he half opens my door, says softly but feelingly, " Curse you ! " and closes it again.

I lie in wait for Mr. Bluff after the meeting, but he dodges me successfully. He has developed the distressing habit of cancelling engagements which I make for him and making others which he considers more important ; I therefore feel temporarily obliged to confer with him on behalf of every single client. It is not until late afternoon that I catch him as he is tearing out to a meeting, accompanied by another of his partners, Mr. Huff. They are both looking important, as men do when they are going to be late for something.

" Please," I squawk, " please, *when* can Splodge of British Balloons come and see you ? "

Mr. Bluff, tried beyond endurance, shouts, " November " over his shoulder as he escapes.

" All right," I say to his retreating figure, " November."

November is a good three months ahead, but it is a Friday afternoon and my blood is up. I dial British Balloons' number, get through to Splodge and talk solidly for two minutes, ending up with, " so 3 o'clock on Wednesday, 16th November, appears to be the first available time." I come to a halt, and wait for Splodge to howl with fury. He doesn't. He says cheerfully, " Right, I'll be along on the 16th November. Thank you so much." Weakly I replace the receiver, feeling as though the ground has been cut from under my feet. Mr. Bluff returns and, instead of being horrified at my success, is hilariously jubilant. It is all very frustrating.

At home in the country that evening I relax in the greenness of a peaceful garden. My father in a deck-chair opposite me puts down his newspaper and says, " Darling, I've decided to buy a flat in London. Do you think your firm would handle it for me ? "

FLUFF.

HERE AND THERE

FADING MURDER

RIVERS of blood have flowed under the arches of the years since 1952, so it is very natural that massacre of the Drummond family, father, mother and little girl, as they camped by the roadside in the hills of Upper Provence, should now be a very faint memory. At the time it sent a real thrill of horror through England and France and it gave the optimistic British tourists a sharp reminder that not everywhere in Europe is it as safe to halt on the grass verge as at Box Hill or Newlands Corner. The Drummonds had stopped for the night on their way from Digne to Villefranche, establishing themselves a little off the main road, a hundred yards from a farmhouse called La Grande Terre, a high-sounding name for a not very large holding, a narrow strip of land lying in the trough of the Durance valley, with the road on one side and the railway following the river bank on the other. Before morning Sir Jack and Lady Drummond had been shot and their child clubbed to death. The tragedy was followed by a prolonged and sensational investigation, followed by an equally sensational trial and conviction. It is strange that other far remoter trials should remain so fresh in our minds while this one fades. Crippen, " Brides in the bath " Smith, Madeleine Smith, Dr. Ruxton, Steinie Morrison, Burke and Hare, Bywaters and Mrs. Thompson, achieve an apparently endless succession of journalistic resurrections. They are probably neater and easier to write about. The Drummond investigation was a sprawling, untidy, inconclusive affair in which nobody ever unearthed a convincing motive for the wanton brutality of the crime or even had the impression of having pierced through the cloud of peasant secretiveness and prevarication to the story behind the story.

RUSTIC PATRIARCH

THE central figure to emerge from the police investigations was a rustic patriarch in his late seventies, Gaston Dominici, a tough, stubborn old man. The illegitimate child of a servant girl, he had started life as a poor shepherd boy and raised himself by toil and determination to the status of an independent farmer, the head of a ramifying family of children and grandchildren. La Grande Terre was his domain and their focal point. Life in that withdrawn hinterland of the cosmopolitan Riviera touched at no point the sophisticated values of the tourists' playground. Brooding, inbred, with its own primitive, inarticulate instincts and reactions and motives, it was psychologically impenetrable from the outside. In that context the standards of the conventional world made no sense. The officer in charge of the investigation concentrated his efforts on the Dominici family. It was two years before the evidence which he had collected was laid before judge and jury at the assizes. Meanwhile, two of old Gaston's sons had accused their father and retracted their accusations and the old man had confessed four times and withdrawn his confessions. The family was riven by recriminations, denunciations and insults, making the obscure still more obscure. There had been no robbery. The sole explanation suggested was that old Gaston had spied on Lady Drummond while she was undressing, that her husband had resented his intrusion and that in a fit of primitive fury he had shot them both, later killing their child. On 17th November, 1954, his trial came on in the Assize Court at Digne where long ago, by a curious irony, he had been born in the caretaker's lodge. He was convicted and received the death sentence which, however, was commuted to life imprisonment.

THE RELEASE

Now, almost six years afterwards, the recollection of the case has been revived by his release from the gaol at Marseilles on the ground of his extreme old age. The local authorities were aghast at the news of his impending return, for fear it should arouse morbid curiosity among the Riviera tourists. Shrivelled and now bald, but still indomitable and defiant, he was released on the morning of the Quartorze Juillet and driven in a police car to the home of one of his daughters at the lodge of a level-crossing. He had no complaints about his life in prison. He had never been locked in his cell and the warder in charge of him had treated him, he said, like his own grandfather. During the years of his confinement he had read his Bible three times through. Despite all the dissensions of the trial period, the family retains its solid primitive unity. One of his first gestures at home was to pose for his photograph with his wife and twenty-three of their descendants on the very spot of the murder. He roundly affirms his innocence and on his return declared that when he had touched everything, seen everything and smelt the good earth he had worked on all his life he would dedicate himself to discovering the assassin. At eighty-four he is still tough and unconquered.

RICHARD ROE.

DOUBLE TAXATION: U.K. AND ITALY

The Double Taxation Convention between the United Kingdom and Italy, which was signed on 4th July, was published on 27th July as Pt. I of a Schedule to a draft Order in Council. The Convention, which is subject to ratification, provides for the avoidance of double taxation of income and profits, and is expressed to take effect in the United Kingdom from 6th April, 1956. It is in general similar to those which the United Kingdom has already made with other European countries.

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(*continued on p. xi*)

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of " The Solicitors' Journal "]

Publicity for Solicitors

Sir,—Under the above heading your editorial of 15th July (p. 551) stated that " the introduction of the legal advice scheme should render superfluous the legal advice sections of such bodies outside the profession as citizens' advice bureaux, political party centres and advice departments of certain local authorities."

It should be remembered that the official schemes still do not provide for legal aid in certain matters, the most important perhaps being proceedings before tribunals. Moreover, there are many people who are now often involved in legal problems which are almost inextricably mixed with social ones, and who are unable to decide for themselves the exact nature of their problem or to assess the relative importance of its social and legal aspects. For these cases the close partnership between lawyers and social workers in the C.A.B.'s remains the best hope of arriving at a satisfactory solution.

Both the Lord Chancellor and The Law Society have expressed the view that there is a continued need for " Poor Man's Lawyers " and offers of help are still forthcoming from solicitors and barristers.

As " Poor Man's Lawyers " get less it will become even more important that C.A.B.'s should have contact with a legal adviser whom the staff themselves can consult readily, and it is very desirable that such an adviser should have " Poor Man's Lawyer " experience. It is to be hoped that your comment will not have the effect of discouraging any solicitor from offering to do this voluntary work and, having regard to the heading under which your comment appeared, perhaps I might express the view that one of the most valuable and practical contributions to good public relations of both the legal profession and the C.A.B. organisation has been the work done in this sphere and it is not finished yet.

ROBERT EGERTON,
Vice-Chairman,
The National Citizens' Advice Bureaux Committee.

London, W.C.1.

Publicity for Solicitors—and Recruitment

Sir,—This could be effected easily and without expenditure by permitting all solicitors after three years' practice to use some prefix to their names. The standing of the medical profession is enhanced by this, and it automatically draws into the profession those who wish to be proud of a professional community. At present the best solicitors are terrified to let it be known in public that they are solicitors for fear of being accused of publicising themselves.

Some members of the Bar used to have the prefix, " Serjeant," and at one time " Attorney " was used for lawyers. A suffix is not so good and that now used for a solicitor in the telephone book—" Solr."—looks like a private in the Army.

Why can't we use " Sr." ? It would put us on a par with " Dr." and has a resemblance to the respectful title of " Signor " or " Sir."

(Sr.) AMBROSE APPELBE.

London, W.C.2.

Wording of Deeds

Sir,—In your issue of 29th July (p. 607), Mr. T. W. Pinnock suggests, *inter alia*, " Witnesseth as follows " instead of " Now this Deed Witnesseth as follows." If he will refer to " Pension Scheme Precedents," by William Phillips (Sweet & Maxwell), published in 1957, he will find more than one precedent therein which does not include the otiose words " Now this Deed " ; see, for example, precedents 903 and 4013. In fact the words used by Mr. William Phillips are " Witnesses as follows," or simply " Witnesses " ; why " Witnesseth " in an era when " hath," " doth," and so forth have disappeared from conveyances and other deeds ?

WILLIAM HALE.

London, E.C.4.

Last Perpetual Commissioner ?

Sir,—I note that on 15th July, 1960, in an article called " Here and There " (p. 560), you refer to the death of the last of the Perpetual Commissioners.

I do not think that your information is quite correct because my uncle, Charles Egerton Appleton, who used to practise with this firm, is a Perpetual Commissioner and still holds the commission signed by the Lord Chief Justice. I understand that there is no obligation for the relatives of a Perpetual Commissioner to report the death to The Law Society, and there may therefore be more Perpetual Commissioners living than my uncle.

My uncle is at present living at the Old Rectory, Thrandeston, Diss, Norfolk, and I am glad to say appears to be in good health and still writes to me as clearly as ever. He can still and does still use a typewriter and very seldom makes any mistakes with it. He is about eighty-two.

C. H. A. APPLETON
of Messrs. Wright and Appleton.

Wigan.

THE FUTURE OF THE PROFESSION

" The Future of the Profession " was the subject discussed at an informal dinner held by the West London Law Society at St. Stephen's Club, Westminster, on 28th July, with Mr. A. Lingen Watson, the president, in the chair. In opening, Mr. Gerald Gardiner, Q.C., said that the two branches should get to know each other better and study the etiquette of the other. The Bar did not intend to be " stand-offish " as some solicitors thought, but barristers believed that entertaining solicitors was not the correct way to obtain work. There should be close liaison between the Young Barristers' Committee and the Young Solicitors' Group. Later, in reply to questions, Mr. Gardiner said that, although he had no strong feelings either way, there was much in favour of retaining two separate branches in the profession although common examinations at the earlier stages of legal education were desirable. He thought occasional promotions from the county court bench to the High Court bench were useful and he could see no reason why solicitors should not be eligible for appointment to the county court bench.

Mr. John Warren, an under-secretary at The Law Society, who followed, reminded the meeting that there was a potential shortage of solicitors with the present annual rate of wastage of 200 articled clerks ceasing their training. Only about 800 solicitors qualified every year and today the solicitors' profession contained about 19,000 practising certificate holders as against 14,000 or 15,000 before the 1914 war. Reasons which had been given for the relative decline in numbers in recent years were that prospects for solicitors were not sufficiently attractive, that it was intellectually too difficult to make the grade and that it was too expensive. He felt sure that the last reason was the most important and that, unless premiums were waived and articled clerks were paid, solicitors would find it increasingly difficult to recruit assistant solicitors and junior partners. This would be a harmful development for the general public as well as for the profession.

In general discussion several members spoke in favour of fusion of the two branches. The Law Society was urged to increase its recruitment publicity directed to universities and schools. Mr. W. H. Bentley, Town Clerk of Paddington, and a member of the Council of The Law Society, said he thought that the way to combat the fall in numbers of articled clerks was for grants to be established to cover their period of training just as State and county grants were available for undergraduates.

REVIEWS

The Local Government Library: Encyclopædia of the Law of Town and Country Planning. Two volumes. General Editor: DESMOND HEAP, LL.M., P.P.T.P.I., Solicitor; Managing Editor: JOHN BURKE, of Lincoln's Inn, Barrister-at-Law. 1960. London: Sweet & Maxwell, Ltd. £10 10s. net.

The Local Government Library: Encyclopædia of the Law of Compulsory Purchase and Compensation. General Editor: R. S. STEWART-BROWN, M.A., Q.C.; Managing Editor: JOHN BURKE, of Lincoln's Inn, Barrister-at-Law. 1960. London: Sweet & Maxwell, Ltd. £5 5s. net.

Both these works are published as part of the publishers' Local Government Library. But this is not to say that they are only of interest to readers practising in the local government field. They are important as works of reference for anyone who has to advise on the subjects they cover. Both are loose-leaf in form and will be kept up to date by periodical releases. In effect, though now titled and published separately, they constitute together a second edition of the former Encyclopædia of Planning, Compulsory Purchase and Compensation.

In these rapidly developing and changing branches of the law the possession of text-books which are constantly kept up to date is an immeasurable advantage, and the success of the original Encyclopædia and the reputation of the editors is no doubt sufficient guarantee of the success of the new ones.

The Planning Encyclopædia, besides a general introductory statement largely extracted from the General Editor's well-known Outline of Planning Law, contains all the relevant statutes and statutory instruments appropriately annotated, together with Ministerial circulars, as currently in force. It also contains the various Bulletins of Selected Planning Decisions published by the Ministry, and a digest of these decisions and of the many planning appeal decisions published from time to time in the *Journal of Planning Law*. This digest, prepared by Mr. Harold J. J. Brown, LL.M., L.A.M.T.P.I., Solicitor, is a most valuable feature, and it is immediately preceded by an excellent contents list which makes it very easy to find a decision on any particular point.

A few comments may perhaps be made. The reviewer feels that the statement in the Introduction (para. 1-037) that if a condition attached to a planning permission is invalid the whole permission is void, is much too categoric. The decision of the Court of Appeal in the *Pyx Granite* case is quoted as authority for the proposition, but this view was expressed by only one member of the court, Hodson, L.J., and, although it may well be right, the point is probably still very much open. The notes to s. 15 of the Town and Country Planning Act, 1947, lead one to draw the inference that certiorari is still available to question a decision of the Minister under that section, but surely this is not so since the enactment of s. 36 of the Town and Country Planning Act, 1959, to which, incidentally, the notes refer the reader. One might perhaps have expected to find a reference to the enforcement by injunction cases, *A.-G.* v. *Barton* and *A.-G.* v. *Smith*, in the notes to the enforcement sections of the 1947 Act. The Table of Cases contains a number of references to paragraphs which are non-existent, at any rate at this stage of the Encyclopædia's life. But these comments are all of minor significance.

The Compulsory Purchase Encyclopædia is completely independent. Thus the sections of the 1947 Act which are relevant to its subject-matter are printed in full although they also appear in the other Encyclopædia and one is not just left to refer from one to the other. The work contains a general introductory statement, the relevant statutes and statutory instruments appropriately annotated, and also various Ministerial circulars. Two minor comments may be made in passing. First, the reviewer feels that the General Editor has perhaps underestimated the importance of "hope value" in the notes to s. 2 of the Town and Country Planning Act, 1959, but only time will tell who is right; incidentally, a reference to hope value in the Index might be of more value than those to tripe boiler and zinc oxide! However, one appreciates the difficulties of the compiler of the Index as hope value is not mentioned in the text by this convenient name. Secondly, circular R.H.B. (50) 111 of the Ministry of Health on transactions in land for hospital purposes (p. 4033) has been cancelled and replaced by circular H.M. (58) 40.

The general statement contains two very useful appendices listing the main Acts by which compulsory acquisition may be authorised for various purposes. The fact that the appendices together occupy some 21 pages is surely evidence of the importance of the subject. It is one by no means easy to grasp because the Lands Clauses Consolidation Act, 1845, is still the foundation of part of the law and many of the authorities go back to the early days of the railways; more recently the changes in the law governing the assessment of compensation have introduced still more complication. But with the General Editor's sure and clear guidance the reader will readily find his way about.

Both Encyclopædias are complete with Tables of Statutes and Cases and full Indices.

The Local Government Library: Highway Law including the Highways Act, 1959, annotated. By C. A. CROSS, M.A., LL.B., of Gray's Inn, Barrister-at-Law, and J. F. GARNER, LL.M., Solicitor. pp. xxx and (with Index) 505. 1960. London: Sweet & Maxwell, Ltd. £4 4s. net.

Like the two Encyclopædias just reviewed, this book is published as part of the publishers' Local Government Library and, like them, it is of far wider interest than to readers practising in the local government field. Unlike them, however, it is not a loose-leaf book but is bound in the ordinary way.

The Highways Act, 1959, which came into force on the 1st January last, consolidated, with important amendments, most of the earlier statute law relating to highways and bridges much of which was of considerable antiquity. The purpose of the book is "to provide a comprehensive working guide to the Act and to other statutory provisions which have relevance in highway law. The rules of common law which still apply in relation to highways are noted." Part I of the book contains a most admirable introduction outlining the law which appears in the Act and drawing attention to amendments, while Part II contains an annotated copy of the Act. An important feature is a comparative table which enables the reader familiar with the old law to trace its counterpart in the new Act; the notes to each section conversely refer to the old provisions from which the new are drawn. The Act has numerous transitional provisions hidden away in a Twenty-fourth Schedule, and the notes to the sections give convenient references to these where appropriate.

Not only does the Act consolidate the ordinary Highways and Bridges Acts but also the private street works legislation including the New Streets Acts, 1951 and 1957, now the Advanced Payments Code, and it is therefore important to all readers. It also contains important new provisions about new street orders; these are well dealt with by the authors, though it should perhaps be made clear that these only apply to orders made under the 1959 Act and that orders made before the Act under s. 30 of the Public Health Act, 1925, have to be administered under the old law.

This book can be thoroughly recommended to every reader as an important part of his library.

Local Land Charges. Fourth Edition. By J. F. GARNER, LL.M., Solicitor, Town Clerk of Andover. pp. xxii and (with Index) 194. 1960. London: Shaw & Sons, Ltd. £1 2s. 6d. net.

The publication of four editions within eleven years provides evidence of the value of this book. No doubt it is used mainly by clerks to local authorities but solicitors who are in doubt, for example, about the necessity for registration and the consequences of failure to register will find much helpful information in it.

Since the appearance of the third edition several statutes have re-enacted rules as to local land charges and others have created new classes. As the author points out, no material legislation has been passed in consequence of the Report of the Stainton Committee and the topic remains one of uncertainty containing many unsatisfactory rules.

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(*continued on p. xii*)

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NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and, in general, full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

House of Lords

DEBT: OWNERSHIP: SUM OF STERLING IN COMPENSATION TRANSACTION ACCOUNT

Fischler *v.* Administrator of Roumanian Property

Viscount Simonds, Lord Reid, Lord Radcliffe, Lord Cohen and Lord Denning 23rd June, 1960

Appeal from the Court of Appeal.

In 1939, *G*, a Roumanian merchant, exported a quantity of dried peas, the price of which was over £2,200, to a merchant in the United Kingdom. By virtue of the provisions of s. 1 of the Debts Clearing Offices and Imports Restrictions Act, 1934, and the orders made thereunder, the buyer was required to and did pay the price of the goods to the Anglo-Roumanian Clearing Office (A.R.C.O.) who credited it in their books to the sub-account of the Roumanian Commercial Bank, who had been nominated by *G* as the authorised bank to act as "beneficiary" in respect of the price. In consequence of such payment the Roumanian exporter was entitled to spend the price in buying certain classes of goods for export to Roumania, the function of an authorised bank under Roumanian law being to see to it that (*a*) the sterling proceeds were not expended otherwise than for the purchase of goods authorised to be imported into Roumania in compensation for goods exported to the United Kingdom; (*b*) in default of such import the sterling was duly surrendered to the National Bank of Roumania as required by Roumanian law. Subsequently, *G* assigned his rights in respect of £2,193 of the sum in question to the appellant, then a Roumanian merchant, who paid *G* for these rights in Roumanian currency. In June, 1940, the appellant gave instructions to the Roumanian Commercial Bank to make the price available to a British company from which he had bought rubber for export to Roumania. Therefore the bank cabled A.R.C.O. instructing them to pay the £2,193 to the British exporter. A.R.C.O. paid the sum in question as directed, but owing to the cancellation on 25th June, 1940, of all export licences from the United Kingdom the transaction was never completed, and on 25th January, 1941, the money was refunded to A.R.C.O., who credited it once again in their books to the Roumanian Commercial Bank, where it remained until the outbreak of war between the United Kingdom and Roumania. Thereupon, pursuant to s. 8 of the Trading with the Enemy Act, 1939, this sum was paid over to the Custodian of Enemy Property. After the conclusion of hostilities money so paid over could not be recovered by the original Roumanian owners as under art. 1 (2) and (3) of the Treaty of Peace (Roumania) Order, 1948, it was made subject to a charge which made it available to meet the claims of British creditors of Roumanians, and it was transferred, accordingly, to the respondent, the Administrator of Roumanian Property. On 17th June, 1940, the payments agreement between the United Kingdom and Roumania was abrogated and by the Clearing Office (Roumania) Amendment Order, 1940, debts in respect of Roumanian goods imported after that date were to be free from clearing. So far as concerned the proceeds of debts which had reached the fund prior to that date they were left to be applied in accordance with the existing provisions of the scheme, subject to a provision (which never took effect) which made the fund applicable in accordance with any arrangements that might be made between the respective governments with a view to the winding up and final distribution of the sums which had come into A.R.C.O. under the clearing scheme. In 1948 the clearing office itself was abolished by the Debts Clearing Offices Act, 1948, the effect of which was to vest the rights and liabilities of the Clearing Office (so far as material) in the Crown. In 1951 the appellant settled in Israel and became a citizen of that country. In consequence of this and the fact that he suffered persecution in Roumania, the Board of Trade, acting under statutory authority, released the charge on property (if any) belonging to him in the hands of the respondent. The appellant brought an action claiming to be entitled to recover the sum in question. The action was heard by Glyn-Jones, J., who found for the appellant. On appeal by the respondent the Court of Appeal reversed the trial judge. The appellant appealed. Their lordships took time for consideration.

VISCOUNT SIMONDS said that he agreed with the opinion of Lord Radcliffe and would in due course move that the appeal should be allowed. He (his lordship) had been asked by Lord Cohen, who was unable to be present, to say that he (Lord Cohen) also agreed with the opinion of Lord Radcliffe.

LORD REID, for allowing the appeal, said that there was nothing in the 1934 Act, nor in the order of 1939 made thereunder, which took away the beneficial interest in the sum in question from *G* or the appellant as his assignee, and that as the word "owner" in the context of art. 1 (5) (*g*) of the Treaty of Peace Order, 1948, must mean in his opinion beneficial owner, the charge having been removed, the appellant was entitled to recover the sum in question.

LORD RADCLIFFE, for allowing the appeal, said that he agreed with Glyn-Jones, J., that the appellant was the only person who could have any right, interest or property in this sum, as neither A.R.C.O. nor the bank had any beneficial right of property in it, and that the appellant had a right, which English law would recognise and enforce, to compel the bank to give effect to his instructions and direct the disposition of the fund *pro tanto* as he should require. His lordship supported this conclusion on two grounds: (*a*) the bank's rights as nominated beneficiary were purely ministerial and came to an end on the termination of the clearing scheme and could no longer determine the rights of the holder of the fund; (*b*) the clearing legislation by impounding the proceeds of *G's* debt and vesting them in A.R.C.O.'s fund created no new owner of them in the beneficial sense—it merely created over them certain rights of control, out of which he would have got full value in the use of his sterling within the terms of the scheme. Accordingly, the determination of the scheme without winding up of the fund meant that the restrictions on the free use of the proceeds of his debt were removed, subject only to the impediment by way of the charge imposed by the Treaty of Peace Order, 1948. Accordingly, since the charge had been removed the appellant as *G's* assignee emerged as the true owner of the sterling and he was entitled to the judgment which he obtained on the trial of the action.

LORD DENNING also delivered an opinion in favour of allowing the appeal. Appeal allowed.

APPEARANCES: *John G. Foster*, Q.C., and *Mark Littman* (*Herbert Smith & Co.*); *Eustace Roskill*, Q.C., and *J. R. Cumming-Bruce* (*Solicitor, Board of Trade*).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law]

Court of Appeal

HUSBAND AND WIFE: DESERTION: SEPARATION AGREEMENT: RIGHT TO DISREGARD AGREEMENT UNDER STATUTE

Pearce *v.* Pearce

Hodson and Harman, L.JJ., and Phillimore, J.

24th June, 1960

Appeal from Commissioner Sir Reginald Sharpe.

The parties were married in 1932, and in 1936 the wife deserted the husband. On 25th June, 1936, the parties entered into a separation agreement in the usual form. In 1943 and 1945 the wife made attempts (which the court found to be genuine) to become reconciled with her husband, but the husband rejected her offers. In 1958, the husband petitioned for divorce on the ground of the wife's desertion, and the wife by her answer also asked for a divorce on the ground of the husband's desertion. Both parties relied on s. 3 of the Divorce (Insanity and Desertion) Act, 1958.

HODSON, L.J., said that he did not think there was any possible answer to the husband's allegation, confirmed by the commissioner's finding, that it was the wife who deserted the husband in 1936. That being the case, she could not bring herself within the language of the Act, and the agreement for separation could not, so far as she was concerned, be disregarded. It had been argued on her behalf that if it was disregarded in favour of the husband it ought to be disregarded in favour of the wife. That was not so. The matter had to be looked at from the wife's point of view quite independently, as if she alone were the petitioner for divorce and without taking into account the fact that her husband was also taking proceedings against her. From the point of view of the wife as a petitioner, she deserted her husband before the relevant date when the agreement for separation was entered into which prevented her succeeding. Dealing with the husband's petition his lordship said that it was not open to the husband, having regard to the language of the Act "for the purposes of" the section of the Act in question, to use the agreement in his own favour in considering the history of the married life and to disregard it only for the purpose of getting his case of desertion on foot in the first instance. That proposition, however it might be put, was quite unacceptable, having regard to the language of the section and the obvious intention of the Act, which was to relieve persons who were handicapped by the existence of an agreement for separation entered into before desertion became a ground for divorce. The appeal on behalf of the husband failed, as did the cross-appeal of the wife; and they must be dismissed.

HARMAN, L.J., concurring, said that the husband could not withdraw the agreement for his own case and still rely on it to defeat his wife's answer. What the effect of the Act might be on other provisions of such an agreement—for instance, if there had been financial provisions—he did not propose to try to answer. It was possible that there might be questions arising out of agreements for separation where a petition of this sort had been put on the file.

PHILLIMORE, J., concurred.

APPEARANCES: *Bernard Gillis*, Q.C., and *R. A. Percy* (*Bulcraig & Davis*, for *Hay & Kilner*, Newcastle-upon-Tyne); *William Temple* (*Smith & Hudson*, for *Waller & Houseman*, Newcastle-upon-Tyne).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law]

Queen's Bench Division

NATIONAL INSURANCE: ARTICLED CLERK: NO PROVISION FOR PAYMENT: £100 PAID DURING ONE YEAR FOR HOLIDAYS: WHETHER PAYMENT FOR SERVICES OR PERSONAL GIFT: WHETHER GAINFULLY OCCUPIED

Benjamin and Another *v.* Minister of Pensions and National Insurance

Salmon, J. 1st June, 1960

Appeal by case stated from a determination of the Minister under the National Insurance Act, 1946.

An articled clerk was employed by a solicitor under articles of clerkship executed on 31st August, 1954. The articles, which were in the usual form, contained no provision for remuneration for the clerk; nevertheless he was given small cheques at Christmas, 1954 and 1955, as Christmas boxes, it being the practice of the solicitor to make such gifts to his staff. At the beginning of 1956 the solicitor told the clerk that he was pleased with his work and that in recognition of his services he would give him £100 in 1956 to be spent on holidays but that it would be better if the clerk received the money in four equal payments and the clerk was to ask for money when he wanted it. The clerk duly asked for and received £25 in March, July, September and December, 1956. The Minister of Pensions and National Insurance, on an application by the solicitor made under reg. 3, para. (1), of the National Insurance (Determination of Claims and Questions) Regulations, 1948, determined, *inter alia*, that the clerk was a non-employed person for the purposes of the National Insurance Act, 1946, during 1954 and 1955 but an employed person during 1956. The solicitor moved to have his decision relating to 1956 reversed, claiming that the clerk was not gainfully occupied during that period and should not be regarded as within the class of employed persons.

SALMON, J., said that the case turned upon the true construction of s. 1 (2) of the National Insurance Act, 1946. The contest was whether the clerk during 1956 was an "employed person" within the meaning of those words in para. (*a*) of s. 1 (2), or a "non-employed person" within the meaning of those words in para. (*c*). If he was an employed person he and his employer were liable to pay national insurance contributions for the whole of 1956; if he was a non-employed person neither would be obliged to pay any contribution to national insurance during that period. The first point taken on behalf of the appellants was that the £100 the clerk received during 1956, even if assumed to have been paid for services, was not paid under a contract of service, as the articles did not provide for any payment whatsoever. In his lordship's judgment it mattered not at all that the contract of service did not itself provide for any payment. He had come to the clear conclusion that the gain need not be provided for in the contract. Although there was no contractual obligation, if money was paid to a servant for services which he had rendered under the contract of service, he was a person gainfully occupied in employment under a contract of service, notwithstanding that the contract made no provision for those payments. As to the second point taken, that an employed person must have entered the employment with the hope, intention or desire of being gainfully employed, clearly the clerk had no hope, intention or desire of payment, but in his lordship's view, if a man was in fact paid money for services during the course of his employment the fact that when he entered into his employment he had no hope, intention or desire of obtaining gain was not of the slightest relevance. There was nothing of substance in that ground of appeal. As to the third point taken, he agreed that the gain must arise from the employment and not from the personality of the employed person. The crucial test here was whether the

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SOLICITOR required by City firm to assist Partner specialising in Company and Commercial field. Exceptional prospects for young man with ability. Applicants awaiting results of June finals will be considered.—Apply giving age and experience to Box 6883, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITORS, Middle Temple, require assistant, minimum qualification five years; experienced Conveyancer, knowledge Litigation; capable handling large volume work. Salary £1,250–£1,500, according to experience.—Phone CENtral 6394 (day), SPEedwell 2946 (evenings).

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LADY wanted. Divorce procedure and interviewing. Lincoln's Inn. State salary and experience.—Box 6866, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

NOTTINGHAM.—Probate and Conveyancing Clerk required; unadmitted, capable of working without supervision. Write with full details.—Box 6826, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

ASSISTANT Solicitor required as assistant to senior partner. Able to work in general matters without supervision or with slight supervision. Five-day week. Salary by arrangement.—Write stating age and experience, Marcan & Dean, 20 Victoria Street, S.W.1.

OXFORDSHIRE Solicitors in congenial country town urgently require assistant capable of handling mainly conveyancing but some general work; good prospects including partnership for suitable man.—Box 6871, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

FLADGATE & CO., 70 Pall Mall, S.W.1, require young conveyancer to work with or without supervision. Salary by arrangement according to experience. Holiday arrangements honoured. No Saturdays. Pension scheme. Good prospects for suitable applicant.

ASSISTANT Solicitor recently qualified wanted for old-established general practice in Barnsley; willing to undertake advocacy.—Box 6396, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CITY Solicitors require unadmitted Probate Clerk.—Write giving particulars with age, experience and salary required, to Box 6350, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

LOCUM

LONDON Solicitor requires assistance or locum during September; experience in all branches necessary.—Box 6848, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

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SOLICITOR (51), at present a " one-man firm " desires to join established firm; qualified to undertake highest responsibilities at once, especially in the field of conveyancing; public school and university.—Box 6885, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

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SOLICITOR, exceptional ability, wide experience and abundant common sense, seeks position with London firm; prefers not to specialise. Commencing salary not less than £1,750 with prospects of early advancement.—Box 6868, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

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THE " CORDEX " SELF-BINDING CASE specially designed to contain issues of THE SOLICITORS' JOURNAL is now available price 14s., post free. Capacity 26 issues and index. Issues easily inserted or removed.—The Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

continued on p. xv

clerk was being paid for his services, or was gaining something merely because of his personality and its impact on the solicitor. Applying that test: was the £100 a personal gift to the clerk or was it remuneration? His lordship was not satisfied that the solicitor intended the money to be a personal gift. The Minister had not given the grounds on which he had reached his conclusions. When a case was stated for the purpose of coming before a court of appeal it was very useful for the appellate tribunal to know the grounds upon which the decision appealed against was based. There might be cases where the fact that the tribunal did not know the grounds would make it impossible to decide the appeal. His lordship was, however, entitled to draw inferences of fact and he thought that the Minister had in effect found that the £100 was not given to the clerk as a personal present but as payment for services as a clerk. He could not say on the facts found that the Minister had come to a wrong conclusion when he concluded that the clerk was gainfully occupied during 1956. The appeal was accordingly dismissed.

APPEARANCES: *J. F. Coplestone-Boughey* (*Harold Benjamin and Collins*); *R. A. Barr* (*Solicitor, Ministry of Pensions and National Insurance*).

[Reported by Mrs. E. M. WELLWOOD, Barrister-at-Law]

LIBEL: WHETHER COMPLAINT TO BAR COUNCIL PRIVILEGED

Lincoln *v.* Daniels

Salmon, J. 24th June, 1960

Point of law.

The defendant sent letters complaining of the conduct of the plaintiff, a member of the Bar, to the Bar Council. In an action for libel the defendant contended that the communications were protected by abolute privilege.

SALMON, J., said that any member of the public might make a complaint about a member of the Bar to the Bar Council and if the Bar Council considered that the complaint raised a prima facie case against the barrister the practice of the Bar Council was to send the papers to the Benchers of the Inn of Court to which the barrister belonged. The Bar Council itself had no judicial function, and no quasi-judicial function; it did not adjudicate upon the matter of the complaint. Therefore, no absolute privilege attached to the communications. But a member of the public had this limited protection that, provided he was not misusing the privileged occasion, the publication was covered by the privilege. If, however, he was malicious, he had no defence on the ground of privilege. The submission failed.

APPEARANCES: *Neville Faulks*, Q.C., *Joseph Dean* and *Diana Phillips* (*A. Kramer & Co.*); *Alan Campbell* and *J. M. Bowyer* (*Basil Greenby & Co.*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law]

Probate, Divorce and Admiralty Division

HUSBAND AND WIFE: CONDONATION: REVIVAL: WHETHER ADULTERY UNKNOWN TO CONDONING SPOUSE AND NOT PLEADED CAN CONSTITUTE REVIVAL

Scott *v.* Scott (Quine cited)

Karminski, J. 13th May, 1960

Defended suit for divorce.

The wife petitioned for divorce on the ground of the husband's desertion in March, 1954. She prayed for the exercise of the court's discretion in respect of her adultery both before and after the parting. The husband, by his answer, admitted leaving the wife in March, 1954, but alleged just cause for leaving. He also alleged adultery between the wife and the party cited from June, 1953, onwards. The husband conceded that he had condoned the wife's adultery, but pleaded that it had been revived by her desertion. At the hearing of the suit, the wife's evidence disclosed adultery by her in 1956 and 1957 with a man other than the party cited. The husband did not know of this adultery and had not alleged it in his answer. The question arose whether that unpleaded adultery should be taken into account by the court as reviving the condoned adultery with the party cited.

KARMINSKI, J., held that it was the duty of the court, under s. 4 of the Matrimonial Causes Act, 1950, to take into account the unpleaded adultery, in determining whether the earlier adultery, which had been condoned, had been revived.

APPEARANCES: *A. C. Goodall* (*Weigall & Inch*, Margate); *Elaine Jones* (*H. H. H. Wiggett*, Law Society Divorce Department, London).

[Reported by D. R. ELLISON, Esq., Barrister-at-Law]

"THE SOLICITORS' JOURNAL," 4th AUGUST, 1860

ON the 4th August, 1860, THE SOLICITORS' JOURNAL wrote: "Lord Brougham has taken up Mr. Roebuck's notion about the promotion of county court judges to seats on the Bench at Westminster Hall: and it is by no means unlikely that the topic may obtain some degree of popularity among professed law reformers. The *Spectator* has already written one of its characteristic articles in favour of the plan. The principal arguments, however, of the writer in that journal, as well as of Lord Brougham and Mr. Roebuck are simple enough. Judges, they say, have hitherto been generally selected from among the leading advocates at the Bar; but judicial qualifications are very different from those of an advocate; and therefore the probability is that a brilliant and successful advocate will not turn out a sound and useful judge. Thus they argue that the proposed change must be for the advantage of Westminster Hall. Their second argument, however, is of a different kind. 'The occasional selection,' says the *Spectator*, 'of a county court judge, a recorder, or even perhaps of a police magistrate, would cause all these minor appointments to be sought by the very best men, and would create a laudable ambition for promotion at the Bar and on the Bench.' In our present cursory allusion to the subject we shall only express a doubt . . . whether, under the proposed system, we should as a rule surpass in point of learning and judicial fitness the judges who have hitherto presided in the superior courts of common law . . . As to the laudable ambition for promotion which it is supposed is now wanting . . . we are disposed to think that there is at present quite enough of 'ambition for promotion' both on the Bench and at the Bar; and, moreover, we are very much inclined to question whether the ambition among judges to obtain judicial promotion is in itself a quality altogether desirable or that may not exist in too high a degree . . . for the dignity of the Bench . . ."

NEW COURT BUILDINGS

Hampshire County Council approved a recommendation at its meeting on 25th July to engage an architect to prepare sketch plans and elevations for the building of new assize and quarter sessions courts at Winchester.

Work is expected to commence early next year on Plymouth's new law courts which are to house county, magistrates' and juvenile courts and a probation department; the cost of the new building is estimated at £300,000.

IN WESTMINSTER AND WHITEHALL

ROYAL ASSENT

The following Bills were given the Royal Assent on 29th July:—

Adoption.
Appropriation.
Betting and Gaming.
Blackfriars Bridgehead Improvements.
Bournemouth Corporation.
Brighton Corporation.
Bristol Corporation.
British Transport Commission.
Bude-Stratton Urban District Council.
Building Societies.
Canterbury and District Water.
Caravan Sites and Control of Development.
Charities.
City of London (Guild Churches).
City of London (Various Powers).
Clean Rivers (Estuaries and Tidal Waters).
Corporate Bodies' Contracts.
Croydon Corporation.
Cyprus.
Derby Corporation.
Edinburgh Merchant Company Order Confirmation.
Essex County Council (Fullbridge, Maldon).
Films.
Finance.
Glasgow Corporation Order Confirmation.
Gloucester and Sharpness Canal (Water).
Hastings Pier.
Hertfordshire County Council.
House of Commons Members' Fund.
Lancashire County Council (Industrial Development, etc.).
London County Council (General Powers).
London County Council (Money).
Manchester Ship Canal.
Matrimonial Proceedings (Magistrates' Courts).
Mental Health (Scotland).
Methodist Church Funds.
Mexborough and Swinton Traction.
Newcastle upon Tyne Corporation.
Nigeria Independence.
Offices.
Oil Burners (Standards).
Oldham Corporation.
Pier and Harbour Order (Fowey) Confirmation.
Pier and Harbour Order (Yarmouth (Isle of Wight)) Confirmation.
Presbyterian Church of England.
Public Health Laboratory Service.
Road Traffic (Amendment).
Road Traffic and Road Improvements.
Salford Corporation.
Somerset County Council.
Southampton Corporation.
Southend-on-Sea Corporation.
Statute Law Revision.
Tyne Tunnel.
University of Bristol.

STATUTORY INSTRUMENTS

Agricultural Goods and Services Scheme (England and Wales) (Amendment) Order, 1960. (S.I. 1960 No. 1238.) 5d.

Argyll County Council (Mill Loch, Gigha) Water Order, 1960. (S.I. 1960 No. 1247 (S. 63).) 5d.

Bushy Park (Second Amendment) Regulations, 1960. (S.I. 1960 No. 1231.) 4d.

Census of Distribution (1962) Order, 1960. (S.I. 1960 No. 1212.) 5d. See p. 628, *post*.

Draft **Census of Distribution** (1962) (Restriction on Disclosure) Order, 1960. 5d.

County of Inverness (Allt an Fhuarain, Arnisdale) Water Order, 1960. (S.I. 1960 No. 1200 (S. 61).) 5d.

Courts-Martial Appeal Court (Fees and Expenses) Regulations, 1960. (S.I. 1960 No. 1227 (L. 9).) 5d. See p. 628, *post*.

Draft **Double Taxation Relief** (Taxes on Income) (Italy) Order, 1960. 8d. See p. 620, *ante*.

Greenwich Park (First Amendment) Regulations, 1960. (S.I. 1960 No. 1230.) 4d.

Hampton Court Gardens (Second Amendment) Regulations, 1960. (S.I. 1960 No. 1232.) 4d.

Holyrood Park (First Amendment) Regulations, 1960. (S.I. 1960 No. 1236.) 4d.

Hyde Park (First Amendment) Regulations, 1960. (S.I. 1960 No. 1233.) 4d.

Import Duties (European Free Trade Association) (No. 2) Order, 1960. (S.I. 1960 No. 1217.) 4d.

Import Duties (General) (No. 7) Order, 1960. (S.I. 1960 No. 1218.) 5d.

Import Duties (General) (No. 8) Order, 1960. (S.I. 1960 No. 1219.) 4d.

Import Duty Drawbacks (No. 9) Order, 1960. (S.I. 1960 No. 1220.) 5d.

Licensed Dealers (Conduct of Business) Rules, 1960. (S.I. 1960 No. 1216.) 8d. See p. 628, *post*.

London Traffic (Prohibition of Waiting) (South Street, Dorking) Regulations, 1960. (S.I. 1960 No. 1228.) 5d.

Matrimonial Causes (District Registries) (No. 2) Order, 1960. (S.I. 1960 No. 1213 (L. 8).) 4d. See p. 616, *ante*.

Mental Health (Hospital and Guardianship) Regulations, 1960. (S.I. 1960 No. 1241.) 1s. 5d.

Monopolies and Restrictive Practices (Imported Hardwood and Softwood Timber) Order, 1960. (S.I. 1960 No. 1211.) 5d.

National Health Service (Functions of Regional Hospital Boards, etc.) Amendment Regulations, 1960. (S.I. 1960 No. 1240.) 4d.

National Health Service (Superannuation) (Amendment) Regulations, 1960. (S.I. 1960 No. 1178.) 11d.

National Health Service (Superintendents of Mental Hospitals, etc.) Regulations, 1960. (S.I. 1960 No. 1239.) 4d.

National Insurance (Graduated Contributions and Non-participating Employments—Miscellaneous Provisions) Regulations, 1960. (S.I. 1960 No. 1210.) 8d.

National Insurance (Pensions, Existing Contributors) (Transitional) Amendment Regulations, 1960. (S.I. 1960 No. 1226.) 5d.

North East Lincolnshire (Weelsbey Pumping Station) (Variation) Order, 1960. (S.I. 1960 No. 1229.) 5d.

Regent's Park (First Amendment) Regulations, 1960. (S.I. 1960 No. 1234.) 4d.

Richmond Park (Second Amendment) Regulations, 1960. (S.I. 1960 No. 1235.) 4d.

Road Traffic Act, 1956 (Commencement No. 10) Order, 1960. (S.I. 1960 No. 1242 (C. 11).) 5d.

Stopping up of Highways Orders, 1960 :—
County of Durham (No. 16). (S.I. 1960 No. 1243.) 5d.
County of Essex (No. 13). (S.I. 1960 No. 1222.) 5d.
County of Glamorgan (No. 4). (S.I. 1960 No. 1244.) 4d.
County of Gloucester (No. 7). (S.I. 1960 No. 1202.) 5d.
County of Lancaster (No. 17). (S.I. 1960 No. 1224.) 5d.
County of Lancaster (No. 18). (S.I. 1960 No. 1245.) 5d.
London (No. 25). (S.I. 1960 No. 1203.) 5d.
London (No. 40). (S.I. 1960 No. 1204.) 5d.
London (No. 41). (S.I. 1960 No. 1205.) 5d.
County of Middlesex (No. 10). (S.I. 1960 No. 1206.) 5d.
County Borough of Newport (No. 3). (S.I. 1960 No. 1246.) 5d.
County of Warwick (No. 7). (S.I. 1960 No. 1221.) 5d.
County of Worcester (No. 8). (S.I. 1960 No. 1225.) 5d.
County of York, West Riding (No. 12). (S.I. 1960 No. 1223.) 5d.

Wages Regulation (Hollow-ware) Order, 1960. (S.I. 1960 No. 1256.) 8d.

Classified Advertisements

continued from p. xiv

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SELECTED APPOINTED DAYS

July

28th — National Insurance (Graduated Contributions and Non-participating Employments—Miscellaneous Provisions) Regulations, 1960. (S.I. 1960 No. 1210.)

29th — London Traffic (50 m.p.h. Speed Limit) (No. 2) Regulations, 1960. (S.I. 1960 No. 1198.)

Wages Regulation (Stamped or Pressed Metal-Wares) Order, 1960. (S.I. 1960 No. 1189.)

August

1st — Factories Act, 1960, s. 18.

National Insurance (Pensions, Existing Contributors) (Transitional) Amendment Regulations, 1960. (S.I. 1960 No. 1226.)

1st — Washing Facilities (Running Water) Exemption Regulations, 1960. (S.I. 1960 No. 1029.)

2nd — Game Laws (Amendment) Act, 1960.

3rd — Road Traffic Act, 1956, s. 4 (3), (4) and (5); in s. 4 (6) the words from the beginning to "subs. (3) of this section"; and Sched. VIII, para. 34 (6).

4th — Traffic Signs (Speed Limits) (England and Wales) Directions, 1960. (S.I. 1960 No. 1125.)

Traffic Signs (Speed Limits) Regulations, 1960. (S.I. 1960 No. 1124.)

POINTS IN PRACTICE

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. They should be brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope. Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all

Contract—Sale of House—Duty of Agent to Inquire Whether Contract Completed Before Returning Deposit

Q. A point has recently arisen in connection with a sale of a freehold house on which we can find no judicial decision and should be glad of your assistance. The facts are briefly as follows: Negotiations were entered into for the sale of a freehold and the deposit paid to the agents who gave a receipt to the purchaser as stakeholders subject to contract and so informed their client, the vendor. The contracts were subsequently agreed and exchanged in which it was recited that the deposit had been paid to the agents as stakeholders. Unbeknown to either the vendor or her solicitors the purchaser shortly after signing the contract called upon the agents and stated she had decided not to proceed and requested the return of her deposit, which the agents without any consultation with either solicitors gave her. The vendor's solicitors contemplate issuing proceedings against the agents for the deposit under the usual forfeiture clause in the contract. 1. Was it essential that the agents should have been informed of the exchange of contracts to confirm their position as stakeholders? 2. Are the agents liable for the deposit, bearing in mind they parted with it without informing either their client, the vendor, her solicitors or the purchaser's solicitors or inquiring the position as regards the contract?

A. 1. We see no reason why the agents should have been informed. They gave a receipt as stakeholders subject to contract and we think they owed a duty to the vendor to inquire whether a contract had been executed before returning the deposit. Once the contract was made the condition was fulfilled on which payment of the deposit was made and so we think the agents were stakeholders pursuant to the contract. 2. On principle we think the agents are liable. They should have held the deposit until it became properly payable to one party or the other. The duty of a stakeholder is, *inter alia*, to pay it to the vendor if the contract is completed or if it is broken by the purchaser (as appears to have occurred here by the purchaser's repudiation).

Compulsory Purchase—Compensation—Expired Lease—Valuation at Date of Notice to Treat

Q. We act for *X* Co., Ltd., the tenants of certain industrial property in this city. We also act for Messers. *A*, *B* and *C*, the owners of the freehold of the same property. A notice to treat under a local Act was served after 1947 on both *X* Co., Ltd., and on Messrs. *A*, *B*, and *C*. At that time *X* Co., Ltd., held a lease from Messrs. *A*, *B*, and *C* of which ten years had still to run. It has, of course, now expired. We would like your advice as to the basis of compensation to *X* Co., Ltd., and Messrs. *A*, *B*, and *C*. The local authority claim that as the lease has now expired *X* Co., Ltd., have no claim for the value of that lease or for disturbance, but that Messrs. *A*, *B*, and *C* are only entitled to compensation as at the date of the notice to treat, i.e., the value of the freehold less the leasehold interest subsisting as at the notice to treat. We believe that this was at one time the usually accepted view but that recently doubts have been cast upon it. We should be glad of your advice with reference to any authorities or recent articles in the legal Press. Our view is that, as compensation should be assessed as at the date of the notice, *X* Co., Ltd. are entitled to the value of the lease as at that date and for the actual loss occasioned by disturbance.

A. The decision of the Court of Appeal in *Holloway and Another* v. *Dover Corporation* [1960] 1 W.L.R. 604; p. 466, *ante*, is directly in point so far as *X* Co.'s claim is concerned. It appears from this decision that the company are not entitled to any compensation in respect of the lease or for disturbance, on the ground that the local authority are not in fact acquiring anything from them, though some compensation may be payable under s. 37 of the Landlord and Tenant Act, 1954. This assumes that the authority acquire the freehold and serve the necessary notice to quit. If the authority require possession before the expiration of the appropriate notice, compensation will be payable under s. 121 of the Lands Clauses Consolidation Act, 1845, for the value of the unexpired interest and other compensation, including compensation for disturbance, as provided in the section. So far as the claims of the freeholders, Messrs. *A*, *B*, and *C*, are concerned, we are of the opinion that the argument of the local authority is correct, namely, the freehold is to be valued as at the date of the notice to treat subject to the lease then subsisting. It is a settled rule, see Cripps on Compulsory Acquisition of Land, 10th ed., paras. 4–011 and 4–055 and the extract from *Penny* v. *Penny* (1868), L.R. 5 Eq. 227, quoted in the former, that the valuation is to be as at the date of the notice to treat. There is, in our opinion, nothing in the *Dover* case to derogate from this principle where the freehold interest is being acquired.

Settled Land Act, 1925—Grant of Right of Way—Determinable Fee

Q. Precedent No. 3 on p. 368 of vol. 6 of the Encyclopædia of Forms and Precedents provides for the granting of a right of way in fee simple. In the precedent a clause is included in the following words: "The right of way hereby granted shall not be severable, but shall be enjoyed only as long as the said premises of the grantee shall be occupied as one tenement." What is the effect of that clause? Is it not to make the fee simple a fee simple determinable and as such to bring into effect s. 1 (1) (ii) (*c*) of the Settled Land Act, 1925, with the result that the right of way then becomes settled land? If this is the case, who are the trustees of the settlement at the commencement of the use of the right of way and does the settlement end when the premises are no longer occupied as one tenement with a resulting trust in fee simple in favour of the grantor?

A. This is an interesting point. The easement is, in the circumstances mentioned, a determinable fee, as we think the amendment made by the 1926 Act to s. 7 (1) of the Law of Property Act, 1925, does not apply to the Settled Land Act, 1925. The easement is thus settled land, and it will remain so until the servient owner in whom a right of reverter is vested (see Settled Land Act, s. 1 (5)) exercises the right. The dominant owner has the powers of a tenant for life for the purposes of the Settled Land Act (s. 20 (1) (iii)), and there are no trustees of the settlement. These would have to be appointed if the benefit of the easement were sold, either by servient and dominant owner acting together or by the court. All very awkward!

NOTES AND NEWS

CENSUS OF DISTRIBUTION IN 1962

The Census of Distribution (1962) Order, 1960 (S.I. 1960 No. 1212), prescribes the calendar year 1962 as a year in which the Board of Trade must take a census of distribution and other services for the purposes of the Statistics of Trade Act, 1947. The undertakings in the field of distribution and in the field of other services to which the census will relate are described in the order.

RULES FOR LICENSED DEALERS IN SECURITIES

The Licensed Dealers (Conduct of Business) Rules, 1960 (S.I. 1960 No. 1216), which come into operation on 9th August, regulate the conduct of business by persons licensed to deal in securities under the Prevention of Fraud (Investments) Act, 1958, and supersede the rules dated 26th July, 1939, made under the Prevention of Fraud (Investments) Act, 1939, with respect to conduct of licensed dealers. The principal changes are (1) that the rules now apply to offers by licensed dealers to acquire securities as well as to dispose of them; hitherto they have only applied to offers to dispose of securities for purchase; (2) the requirements specified in relation to offers are more stringent; (3) additional requirements are specified in relation to take-over offers; and (4) licensed dealers may not transmit a recommendation by the board of directors of a corporation that an offer to acquire the corporation's securities be accepted unless specified requirements are complied with.

COURTS-MARTIAL APPEAL COURT: FEES

The Courts-Martial Appeal Court (Fees and Expenses) Regulations, 1960 (S.I. 1960 No. 1227), which become operative on 1st September, make provision as to the costs payable under the Courts-Martial (Appeals) Act, 1951, in cases of appeal to the Courts-Martial Appeal Court. Regulation 1 relates to the fees and other sums payable to a solicitor assigned to an appellant by the court; reg. 2 relates to the fees to be allowed to counsel so assigned; reg. 3 makes special provision for a case where two or more appellants whose appeals are heard together are represented by the same solicitor or counsel; reg. 4 relates to the payment of fees in cases where an appeal is abandoned; reg. 5 relates to the payment of witnesses' allowances; reg. 6 relates to the expenses of the appearance of an appellant not in custody; reg. 7 relates to the assessment of the sums to be allowed to a solicitor or counsel assigned to an appellant; and reg. 8 makes provision for the allowance of higher fees to be paid in a case where the fees otherwise payable would not represent fair remuneration for the work done.

REORGANISATION OF MAGISTRATES' COURTS IN LONDON: COMMITTEE

A departmental committee has been appointed by the Secretary of State for the Home Department, Mr. R. A. Butler, to inquire into the reorganisation of magistrates' courts in London. The committee has the following terms of reference:—

> "To consider and report what measures are required, in the light of present conditions, to facilitate the integration of the metropolitan magistrates' courts and the petty sessional courts in London, as recommended by the Committee on Courts of Summary Jurisdiction in the Metropolitan Area, 1937, whether by way of (*a*) legislation; (*b*) administrative action; or (*c*) the provision of new court buildings or any changes in the use of such buildings."

Judge C. D. Aarvold, O.B.E., T.D., the Common Serjeant, has agreed to be chairman of the committee. The other members will be: Mr. B. C. Aldous, J.P., Mr. R. H. Blundell, Chief Metropolitan Magistrate, Mr. W. D. Cooper, Deputy Receiver for the Metropolitan Police District, Mr. R. R. Pittam, Home Office, Lady Pugh, J.P., Mr. W. T. C. Skyrme, C.B.E., T.D., Secretary of Commissions, Lord Chancellor's Office, and Mr. F. C. Trehern, J.P. The secretary of the committee is Mr. R. L. Jones, of the Home Office.

LEGAL AID FOR LORDS' APPEALS

In reply to a question, asked on 28th July, whether in the event of the Administration of Justice Bill receiving the Royal Assent Her Majesty's Government would arrange for legal aid to be made available for appeals to the House of Lords, the Lord Chancellor announced his intention to make an order to make legal aid available in all civil and criminal appeals from English courts. The order would take effect as soon as arrangements could be made after the passing of the Administration of Justice Bill.

COMPULSORY PURCHASES: INCREASED INTEREST

Owners who have their land compulsorily purchased will be entitled to 6½ per cent. interest on compensation from the date on which their land is entered. The rate is raised from 5½ per cent. to 6½ per cent. from 30th July by the Acquisition of Land (Rate of Interest on Entry) Regulations, 1960 (S.I. 1960 No. 1311).

SOLICITOR AS P.P.S.

Mr. WILLIAM RADCLIFFE VAN STRAUBENZEE, solicitor, Conservative M.P. for Wokingham since October, 1959, has been appointed Parliamentary Private Secretary to Sir David Eccles, Minister of Education.

Societies

The HAMPSHIRE INCORPORATED LAW SOCIETY held its annual general meeting in Winchester on 28th June when the following officers were elected: president, Mr. J. M. F. Peters (Fareham); vice-president, Mr. C. G. A. Paris (Southampton); hon. secretary and treasurer, Mr. C. G. A. Paris (Southampton); assistant hon. secretary, Mr. L. F. Paris (Southampton). The following were re-elected to serve on the committee: Mr. A. R. Lightfoot and Mr. H. F. B. Clark (Southampton), Mr. P. Dungay (Aldershot) and Mr. R. S. L. Bowker (Winchester). The remaining vacancy on the committee was filled by Mr. S. E. Bridgwater (Southampton).

The annual dinner of the society was held in the Guildhall, Winchester, on 22nd July, when some 130 members and guests attended. The guests included His Honour Judge Harington, Q.C., the Recorder of Portsmouth, the Chairman of the Isle of Wight Quarter Sessions, Sir Thomas Lund, C.B.E., and the presidents of the Bournemouth and Isle of Wight law societies.

The PROFESSIONAL CLASSES AID COUNCIL, upon which sit representatives of The Law Society and the Solicitors' Benevolent Association, held its annual general meeting on 7th July. At the meeting the president, Lord Moran, was in the chair and the annual report for 1959–60 was presented by the chairman, the Lady Cynthia Colville.

Obituary

MR. WILLIAM LANGHAM HODGES, solicitor, of London, died on 22nd July, aged 76. He was admitted in 1907.

MR. WILLIAM CHARLES PARKIN, solicitor, of Eastbourne, died on 20th July, aged 81. He was admitted in 1922.

MR. JOHN HERBERT WARREN, O.B.E., solicitor, general secretary of the National and Local Government Officers' Association from 1946 to 1957, died on 11th July, aged 64. He was admitted in 1933.

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AUCTIONEERS' ANNOUNCEMENTS

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